

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 8, 2003

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 394

Introduced by Assembly Member Montanez

February 14, 2003

An act to amend Sections 488.460 and 700.150 of the Code of Civil Procedure, ~~and~~ to amend Sections 26721.2, 26738, and 26746 of, and to add Section 26723 to, the Government Code, *and to amend Section 2892 of the Probate Code*, relating to law enforcement fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 394, as amended, Montanez. Law enforcement fees.

(1) Existing law establishes provisions by which a levying officer may serve a writ to attach property in a safe-deposit box.

This bill would impose a fee of \$125 for levying on a safe-deposit box. The bill would also require the levying officer to mail a written notice to the judgment creditor demanding an additional fee, plus costs, as specified; and require the levying officer to release the levy on the safe-deposit box if the additional fee, plus costs, are not paid within a specified period.

The bill would also revise and increase existing fees for serving, executing, and processing a summons and complaint and related

documents, court notices, writs, orders, and other services provided by sheriffs and marshals.

(2) Existing law requires certain processing fees to be assessed for each disbursement of money collected pursuant to specified writs, and further requires that the proceeds of these fees be deposited in a special fund in the county treasury for allocation according to specified percentages.

This bill would delete those percentages and instead require the fund to be expended to supplement the county's cost for vehicle fleet replacement and equipment, maintenance, and civil process operations.

(3) *Existing law requires a financial institution to send to a court identified in letters of guardianship or conservatorship a statement containing specified information, including a list of contents and a description of assets, with regard to assets held in a safe deposit box.*

This bill would limit this duty to circumstances in which the financial institution has been given access to the safe deposit box, delete the requirement regarding a description of assets, and make corresponding changes.

(4) The bill, by requiring new duties of local levying officers and the assessment of new fees, would impose a state-mandated local program.

~~(4)~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 488.460 of the Code of Civil Procedure
2 is amended to read:

1 488.460. (a) Subject to Section 488.465, to attach property in
2 a safe-deposit box, the levying officer shall personally serve a copy
3 of the writ of attachment and a notice of attachment on the
4 financial institution with which the safe-deposit box is maintained.

5 (b) At the time of levy or promptly thereafter, the levying
6 officer shall serve a copy of the writ of attachment and a notice of
7 attachment on any third person in whose name the safe-deposit box
8 stands.

9 (c) During the time the attachment lien is in effect, the financial
10 institution may not permit the removal of any of the contents of the
11 safe-deposit box except as directed by the levying officer.

12 (d) Upon receipt of a garnishee's memorandum from the
13 financial institution, as required by Section ~~701.030~~ 488.610,
14 indicating a safe-deposit box is under levy, the levying officer shall
15 promptly mail a written notice to the judgment creditor demanding
16 an additional fee as required by Section 26723 of the Government
17 Code, plus the costs to open the safe-deposit box and seize and
18 store the contents. The levying officer shall release the levy on the
19 safe-deposit box if the ~~judgment creditor~~ *plaintiff* does not pay the
20 ~~required fee, plus costs, within three business days of the mailing~~
21 ~~of the notice by the levying officer.~~ *fee, plus costs, within 3*
22 *business days plus the extended time period specified in*
23 *subdivision (a) of Section 1013 for service by mail by the levying*
24 *officer.*

25 (e) The levying officer may first give the person in whose name
26 the safe-deposit box stands an opportunity to open the safe-deposit
27 box to permit the removal pursuant to the attachment of the
28 attached property. The financial institution may refuse to permit
29 the forcible opening of the safe-deposit box to permit the removal
30 of the attached property unless the plaintiff pays in advance the
31 cost of forcibly opening the safe-deposit box and of repairing any
32 damage caused thereby.

33 (f) During the time the attachment lien is in effect, the financial
34 institution is not liable to any person for any of the following:

35 (1) Performance of the duties of a garnishee under the
36 attachment.

37 (2) Refusal to permit access to the safe-deposit box by the
38 person in whose name it stands.

39 (3) Removal of any of the contents of the safe-deposit box
40 pursuant to the attachment.

SEC. 2. Section 700.150 of the Code of Civil Procedure is amended to read:

700.150. (a) Subject to Section 700.160, to levy upon property in a safe-deposit box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the safe-deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the safe-deposit box stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution may not permit the removal of any of the contents of the safe-deposit box except as directed by the levying officer.

(d) Upon receipt of a garnishee's memorandum from the financial institution, as required by Section 701.030, indicating a safe-deposit box is under levy, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional fee as required by Section 26723 of the Government Code, plus the costs to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the safe-deposit box if the judgment creditor does not pay the required fee, plus costs, within ~~the time period specified in Section 1013a~~ *3 business days plus the extended time period specified in subdivision (a) of Section 1013* for service by mail by the levying officer.

(e) The levying officer may first give the person in whose name the safe-deposit box stands an opportunity to open the safe-deposit box to permit the removal pursuant to the levy of the property levied upon. The financial institution may refuse to permit the forcible opening of the safe-deposit box to permit the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

(f) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Refusal to permit access to the safe-deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe-deposit box pursuant to the levy.

SEC. 3. Section 26721.2 of the Government Code is amended to read:

26721.2. For any action commenced in the superior court, the fee for the service of the summons, the complaint for which the summons is issued, and all other documents or notices required to be served with the summons and complaint, is thirty dollars (\$30).

SEC. 4. Section 26723 is added to the Government Code, to read:

26723. The fee for ~~levying on~~ *opening* a safe-deposit box pursuant to Sections 488.460 and 700.150 of the Code of Civil Procedure ~~shall be~~ *is* one hundred twenty-five dollars (\$125).

SEC. 5. Section 26738 of the Government Code is amended to read:

26738. The fee for making a not found return on a summons, affidavit and order, order for appearance, subpoena, writ of attachment, writ of execution, writ of possession, order for delivery of personal property, or other process or notice required to be served, certifying that the person or property cannot be found at the address specified ~~shall be~~ *is* thirty dollars (\$30).

SEC. 6. Section 26746 of the Government Code is amended to read:

26746. In addition to any other fees required by law, a processing fee of ten dollars (\$10) shall be assessed for each disbursement of money collected under a writ of attachment, execution, possession, or sale, but excluding any action by the local child support agency for the establishment or enforcement of a child support obligation. The fee shall be collected from the judgment debtor in addition to, and in the same manner as, the moneys collected under the writ. All proceeds of this fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the depositor.

The special fund shall be expended to supplement the county's cost for vehicle fleet replacement and equipment, maintenance, and civil process operations.

A fee may not be charged if the only disbursement is the return of the judgment creditor's deposit for costs.

SEC. 7. *Section 2892 of the Probate Code is amended to read:*

1 2892. (a) When a guardian or conservator, pursuant to letters
2 of guardianship or conservatorship of the estate, opens or changes
3 the name to an account or safe deposit box in a financial institution,
4 as defined in subdivision (b), the financial institution shall send to
5 the court identified in the letters of guardianship or
6 conservatorship a statement containing the following information:

7 (1) The name of the person with whom the account or safe
8 deposit box is opened or changed.

9 (2) The account number or reference number.

10 (3) The date the account or safe deposit box was opened or
11 changed ownership pursuant to letters of guardianship or
12 conservatorship.

13 (4) If the asset is held in an account in a financial institution, the
14 balance as of the date the account was opened or changed.

15 (5) If the asset is held in a safe deposit box, ~~a description of the~~
16 ~~asset, including any title, or policy number, or reference number~~
17 *and the financial institution has been given access to the safe*
18 *deposit box, a list of the contents, including, for example, currency,*
19 *coins, jewelry, tableware, insurance policies or certificates, stock*
20 *certificates, bonds, deeds, and wills.*

21 (6) The name and address of the financial institution in which
22 the asset is maintained.

23 (b) For purposes of this chapter, “financial institution” means
24 a bank, trust, savings and loan association, savings bank, industrial
25 bank, or credit union.

26 SEC. 8. Notwithstanding Section 17610 of the Government
27 Code, if the Commission on State Mandates determines that this
28 act contains costs mandated by the state, reimbursement to local
29 agencies and school districts for those costs shall be made pursuant
30 to Part 7 (commencing with Section 17500) of Division 4 of Title
31 2 of the Government Code. If the statewide cost of the claim for
32 reimbursement does not exceed one million dollars (\$1,000,000),
33 reimbursement shall be made from the State Mandates Claims
34 Fund.